

**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

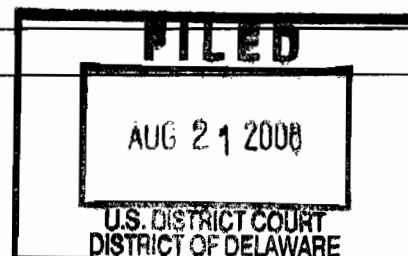
0 8 - 5 3 2

United States District Court		District of <u>DELAWARE</u>	
Name (under which you were convicted): <u>Jimmie Lewis</u>		Docket or Case No.: <u>0305016966</u>	
Place of Confinement: <u>JAME T. VAUGHN CORR. CENTER</u>		Prisoner No.: <u>506622</u>	
Petitioner (<u>include</u> the name under which you were convicted) <u>Jimmie Lewis</u>		Respondent (authorized person having custody of petitioner) <u>v. WARDEN RHELPS</u>	
The Attorney General of the State of		<u>DELAWARE</u>	

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging: NEW CASTLE COUNTY SUPERIOR COURT
500 N. KING ST, WILM, DE 19801
- (b) Criminal docket or case number (if you know): 0305016966
2. (a) Date of the judgment of conviction (if you know): 10/23/03
- (b) Date of sentencing: 2/11/05
3. Length of sentence: 8 YEARS
4. In this case, were you convicted on more than one count or of more than one crime? Yes ☒ No ☐
5. Identify all crimes of which you were convicted and sentenced in this case: CARJACKING 2ND; 5 YEARS LEVEL 5.
THEFT \$1000 OR MORE; 2 YEARS.
RESISTING ARREST; 1 YEAR.
6. (a) What was your plea? (Check one)
- (1) Not guilty ☒ (3) Nolo contendere (no contest) ☐
- (2) Guilty ☐ (4) Insanity plea ☐
- (b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to?

D/A



до сгачнеф
I PP

(c) If you went to trial, what kind of trial did you have? (Check one)

Jury ☒ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes ☒ No ☐

8. Did you appeal from the judgment of conviction?

Yes ☒ No ☐

9. If you did appeal, answer the following:

(a) Name of court: SUPERIOR COURT

(b) Docket or case number (if you know): 64, 2005

(c) Result: DENIED

(d) Date of result (if you know): D/K

(e) Citation to the case (if you know): LEWIS V. STATE, 884 A.2d 512, 2005

(f) Grounds raised: INEFFECTIVE ASSISTANCE OF COUNSELOR, PROSECUTOR MISCONDUCT, ABUSE OF TRIAL JUDGES DISCRETION, DUE PROCESS VIOLATIONS, I.E. INCOMPETENCY, SUBSTANTIVE AND PROCEDURAL DUE PROCESS VIOLATIONS, ETC.

(g) Did you seek further review by a higher state court? Yes ☒ No ☐

If yes, answer the following:

(1) Name of court: SUPREME COURT OF DELAWARE

(2) Docket or case number (if you know): 64, 2005

(3) Result: AFFIRMED

(4) Date of result (if you know): SEPT 29, 2005

(5) Citation to the case (if you know): STATE V. LEWIS, 884 A.2d 512, 2005

(6) Grounds raised: INEFFECTIVE ASSISTANCE OF COUNSEL, PROSECUTORS MISCONDUCT, ABUSE OF TRIAL JUDGES DISCRETION, DUE PROCESS VIOLATIONS, I.E. INCOMPETENCY, SUBSTANTIVE AND PROCEDURAL DUE PROCESS VIOLATIONS, ETC.

(h) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If yes, answer the following:

(1) Docket or case number (if you know): D/A

(2) Result: D / A

(3) Date of result (if you know): D / A

(4) Citation to the case (if you know): D / A

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?

Yes ☒ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: NEW CASTLE COUNTY SUPERIOR COURT

(2) Docket or case number (if you know): CA NO. 08M-07-090 PLA

(3) Date of filing (if you know): JULY 23 RD, 2008

(4) Nature of the proceeding: HABEAS CORPUS PETITION

(5) Grounds raised: THE NEW CASTLE COUNTY SUPERIOR COURT LACKS JURISDICTION TO CONTINUE INCARCERATION DUE TO THE LACK OF AN OATH OR AFFIRMATION PURSUANT TO U.S.C.A 4TH AND CIVIL RULE OF PROCEDURE 7 AND 11 OF THE DELAWARE RULES OF EVIDENCE, I.E., (SIGNATURES) ON THE SENTENCING ORDER, COMPETENCY ORDER, INDICTMENT, JUDGEMENT OF THE JURY TRIALS VERDICT OF GUILT.

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☒

(7) Result: D / A

(8) Date of result (if you know): D / A

- (b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: NEW CASTLE COUNTY SUPERIOR COURT

(2) Docket or case number (if you know): CA NO. 08M-07-127 PLA

(3) Date of filing (if you know): JULY 30TH, 2008

(4) Nature of the proceeding: HABEAS CORPUS PETITION

(5) Grounds raised: SENTENCE FOR THEFT \$1000 OR MORE IS AMBIGUOUS IN NATURE. FOR IN 03-06-0176 IN REGARDS TO HOW I AM TO SERVE SAID COMMITMENT, AT LEVEL 5, LEVEL 4 AND OR LEVEL 3 —>

SEEM AS IF LEVEL 5 IS SUSPENDED
FOR ~~UNKNOWN~~ 6 MONTHS LEVEL 3 AND
FOR 6 MONTHS LEVEL 4.
SEE DETOE V. STATE, 750 A.2d 1200

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☒

(7) Result: D/A

(8) Date of result (if you know): DIA

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: NEW CASTLE COUNTY SUPERIOR COURT

(2) Docket or case number (if you know): CANO. 00M-07-131 PLA

(3) Date of filing (if you know): AUG 1, 2008

(4) Nature of the proceeding: HABEAS CORPUS PETITION

(5) Grounds raised: ON DEC 1, 03 JUDGE TOLIVER(S) ORDER

TO EVALUATE ME FOR COMPETENCY DEEMED ME

INCOMPETENT; PENDING A COMPETENCY EVAL AND

A COMPETENCY HEARING. IT IS WELL ESTABLISHED

SUBSTANTIVE AND PROCEDURE, THAT IT TAKES AN

OFFICIALLY DOCKET COURT ORDER (PROTHONOTARY'S OFFICE)

TO HAVE ME EVALUATED; AND AN OFFICIALLY DOCKETED

COURT ORDER TO SUBJECT ME TO TRIAL, SENTENCING

AND INCARCERATION AT THE D.D.C.

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☒

(7) Result: D/A

(8) Date of result (if you know): DIA

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: Yes ☐ No ☒

(2) Second petition: Yes ☐ No ☒

(3) Third petition: Yes ☐ No ☒

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

THE NEW CASTLE SUPERIOR COURT JUDGE WITOM

SENTENCED ME HEARD SAID PETITIONS, BUT ABUSED

HER DISCRETION WHEN SHE FAILED TO BASE HER

DENIAL(S) IN JUDICIAL FACT AND OR LAW, FROM WHICH

PREVENTS ME FROM BEING ABLE TO COLLATORALLY CHALLENGE

IN JUDICIAL FACT AND OR LAW. SAID PETITIONS WERE

SIMPLE JUDICATED "DENIED"!

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: INEFFECTIVE ASSISTANCE OF COUNSELOR

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

SAID COUNSELOR'S MOTION TO HAVE ME EVALUATED FOR COMPETENCY WAS DEFICIENT OF ARREST AND TRIAL EPISODES OF INCOMPETENCY AND OR INSANITY.

SAID COUNSELOR RE-COITED MY TRIAL TRANSCRIPTS TO SECURE MY CONVICTIONS. SAID COUNSELOR FAILED TO MOTION FOR A BILL OF PARTICULARS. COUNSELOR DID NOT SUBMIT RULE 16 AS EXHIBIT FOR THE JURORS TO REVIEW.

(b) If you did not exhaust your state remedies on Ground One, explain why: _____

I DID EXHAUST STATE REMEDY.

(c) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

I WAS LEAD TO THINK I WOULD HAVE THE OPPORTUNITY ~~WARRANT~~ FOR POSTCONVICTION.

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: POSTCONVICTION

Name and location of the court where the motion or petition was filed: _____

NEW CASTLE COUNTY SUPERIOR COURT

Docket or case number (if you know): 0305016966

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

NOT AVAILABLE

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: SUPREME COURT,
P.O. BOX 476, DOVER DE 19903.

Docket or case number (if you know): ~~WITHDRAWN~~

Date of the court's decision: ~~SEPTEMBER 11, 2006~~ AUG 29, 2006

Result (attach a copy of the court's opinion or order, if available): _____

NOT AVAILABLE

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

D/A

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: _____

NO

GROUND TWO: DUE PROCESS VIOLATION(S)

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

SUPERIOR COURT LACKS JURISDICTION TO TRY ME
AT TRIAL, SENTENCE ME AND INCARCERATE ME
WITHOUT AN OFFICIAL (SIGNED), COMPETENCY ORDER,
SENTENCING ORDER, INDICTMENT THEREAFTER

JUDGE TOLIVER'S DEC 1, 03 ORDER TO HAVE ME
EVALUATED FOR COMPETENCY.

(b) If you did not exhaust your state remedies on Ground Two, explain why: _____

I DID EXHAUST STATE REMEDY.

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

I DID RAISE THIS ISSUE, BUT
IT WAS DENIED AND AFFIRMED.

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

POSTCONVICTION MOTION

Name and location of the court where the motion or petition was filed: _____

NEW CASTLE
COUNTY SUPERIOR COURT, 500 N. KING ST, WILM, DE 19801

Docket or case number (if you know): _____

Date of the court's decision: _____

AUG 29, 2006

Result (attach a copy of the court's opinion or order, if available): _____

NOT AVAILABLE

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☒

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

D / A

Docket or case number (if you know): D / A

Date of the court's decision: D / A

Result (attach a copy of the court's opinion or order, if available): D / A

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

MOTION WAS TIME BARRED EVEN
THOUGH IT WAS MAILED PRIOR TO DEADLINE
AS IT WAS NOTED ON THE POSTMARK.

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: _____

STATE HABEAS CORPUS
CA NO. 08 M-07-131 PLA

GROUND THREE: ABUSE OF MY TRIAL JUDGES DISCRETION.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

CONTINUING TRIAL WITHOUT FIRST HAVING ME PSYCHIATRICALY
EVALUATED. DENING MOTION FOR NEW TRIAL WITHOUT JUDICAL
RATIONAL AND OR EVIDENTIARY HEARINGS PURSUANT TO S.C.T
RULE 33. DENING MOTION FOR SUBSTITUTE COUNSEL WITHOUT
JUDICAL RATIONAL AND OR EVIDENTIARY HEARINGS. NO OATH OR
AFFIRMATION ON SENTENCING ORDER - INDICTMENT - COMPETENCY ORDER, ETC.

(b) If you did not exhaust your state remedies on Ground Three, explain why: _____

I DID EXHAUST MY REMEDY.

(c) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: I WAS LEAD TO

THINK BY DEFENSE COUNSELOR, THAT I COULD RAISE SAID
CONTENTIONS ON POSTCONVICTION, BUT DEFENSE COUNSELORS
UNJUSTIFIABLE DELAY'S SUBJECTED ME TO THE NEW LAW,
OF FILING POSTCONVICTION IN ONE YEAR AND NOT IN
THREE YEARS, EVEN THOUGH I WAS ADJUDICATED GUILTY
PRIOR TO NEW LAW. SEE, SUPER CT CRIM R. 61(i)(1)
JULY 1, 05, AMENDING S.C.T CRIM R. 61(i)(1) MAY 1, 1996.

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: POSTCONVICTION

Name and location of the court where the motion or petition was filed: NEW CASTLE CO. SUPER CT., 500. N. KING ST, WILM, DE 19801

Docket or case number (if you know): 0305016966

Date of the court's decision: AUG 11, 08

Result (attach a copy of the court's opinion or order, if available): "SEE ATTACHED."

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☒

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: D/A

Docket or case number (if you know): D/A

Date of the court's decision: D/A

Result (attach a copy of the court's opinion or order, if available): D/A

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: DELAY TO SENTENCE ME, UNJUSTIFIABLE.

DUE TO MY U.S. CA RIGHTS AS WELL AS RIGHTS UNDER DELAWARE STATE LAW BEING VIOLATION I AM DEEMED TIME BARRED, EXHAUSTED.

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three:

SEE; CA NO. 08M-07-090, PLA, 08M-07-127 PLA, 08M-07-131 PLA

GROUND FOUR: PROSECUTOR'S MISCONDUCT.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

DURING TRIAL, STATES D.A WHILE QUESTIONING VICTIM,
STOP THE VICTIM IN MID SENTENCE AND LEAD VICTIM
TO REPEAT AFTER HIM, STATING I QUOTE:
MR. GEER, TELL THE JURY HOW MR. LEWIS GRABED YOUR
STEERING WHEEL, UNQUOTE, WHEN VICTIM HAD NOT
MADE MENTION OF A STEERING WHEEL INCIDENT, GIVING
REASON FOR DEFENSE COUNSELOR RE-EDITING TRIAL TRANSCRIPTS.

(b) If you did not exhaust your state remedies on Ground Four, explain why: _____

I DID EXHAUST REMEDY, SEE MOTION
FOR JUDGEMENT OF ACQUITTAL AND MOTION FOR
NEW TRIAL

(c) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: RAISED IN MOTIONS
PRIOR TO DIRECT APPEAL, FOR WHICH WERE DENIED.

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: MOTION FOR POSTCONVICTION, NEW TRIAL, JUDGEMENT OF ACQUITTAL,

Name and location of the court where the motion or petition was filed: NEW CASTLE CO.

SUPER. CT, 500 N. KING ST, WILM DE 19801

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

NOT AVAILABLE.

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: NEW CASTLE CO
SUPER. CRIM. CT, 500 N. KING ST, WILM, DE 19801

Docket or case number (if you know): _____

Date of the court's decision: SEPT 29, 05

Result (attach a copy of the court's opinion or order, if available): _____

NOT AVAILABLE

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

DIA

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: _____

DIA

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes ☒ No ☐

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: _____

TIME BARRED DUE TO MY
U.S. CA RIGHTS AND RIGHTS UNDER DELAWARE LAW
BEING VIOLATED BY DEFENSE COUNSELORS DELAY TO SENTENCE.

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: _____

DIA

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available. _____

D/A

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. _____

D/A

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: _____

(b) At arraignment and plea: _____

(c) At trial: JOHN S. EDINGER JR.

(d) At sentencing: JOHN S. EDINGER JR

(e) On appeal: PRO-SE

(f) In any post-conviction proceeding: PRO-SE

(g) On appeal from any ruling against you in a post-conviction proceeding: PRO-SE

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: D 1A

(b) Give the date the other sentence was imposed: D 1A

(c) Give the length of the other sentence: D 1A

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes ☐ No ☒

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.* STATE OF DELAWARE SECURED CONVICTIONS

IN VIOLATION OF MY RIGHTS UNDER DELAWARE LAW
AND THE UNITED STATES CONSTITUTION FOR WHICH
DEFINE NUMEROUS MISCARRIAGES OF JUSTICE,
AND THEREFORE JUSTIFY REVIEW HEREIN.
ORDER §) FROM N.C.C.S. CT

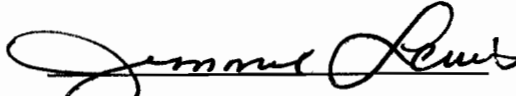
1. MOTION FOR JUDGMENT OF ACQUITTAL, DENIED DI. 32 3/23/04.
2. MOTION FOR NEW TRIAL DENIED, DI 78, 2/28/05.
3. MOTION FOR MODIFICATION, DENIED, DI 87, 6/1/05.
4. MOTION TO IMPUNG TRANSCRIPT(S), DENIED, DI 89, 10/5/05.
5. MOTION FOR MODIFICATION, DENIED, DI 93, 12/12/05.
6. ORDER, DI 98, 2/10/06
7. MOTION FOR POSTCONVICTION, DENIED, DI 111, 8/29/06
8. MOTION FOR POSTCONVICTION, DENIED, DI 119, 9/27/07
9. MOTION FOR MODIFICATION AND CLARIFICATION, DENIED, DI 129, 12/5/07
10. PETITION TO COMPEL, DENIED, DI 133, 2/20/08
11. MOTION FOR POSTCONVICTION, DENIED, DI 139, 3/19/08
12. PETITION FOR HABEAS CORPUS, DENIED JULY 23, 08 08M-07-090 PLA
13. PETITION FOR HABEAS CORPUS, DENIED 7/30/08, 08M-07-027 PLA
14. PETITION FOR HABEAS CORPUS, DENIED AUG 1, 08, 08M-07-131 PLA
15. MOTION FOR POSTCONVICTION, DENIED, AUG 11, 08 DI. 153,

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

(1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of —

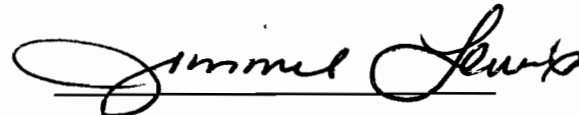
Therefore, petitioner asks that the Court grant the following relief: REVERSAL OF CONVICTIONS,
REMAND FOR RETRIAL

or any other relief to which petitioner may be entitled.


Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct
and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on
8/19/08 (month, date, year).

Executed (signed) on 8/19/08 (date).


Signature of Petitioner

*(...continued)

- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition. _____

IN FORMA PAUPERIS DECLARATION
IN THE U.S. DISTRICT COURT OF DELAWARE

[Insert appropriate court]

* * * * *

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

IN THE MATTER OF

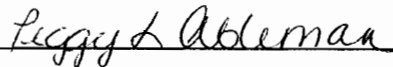
Jimmy Lewis

)
)
) **CIVIL ACTION NO. 08M-07-090 PLA**
) **CRIMINAL ID: 0305016966**
)
)
)
) **HABEAS CORPUS PETITION**

ORDER

This 23rd day of July, **2008**, upon review of the foregoing Petition for a Writ of Habeas Corpus and the record in this case, it is the decision of the Court that the Petition is hereby **DENIED**. Petitioner is legally detained. Petitioner fails to state a claim upon which such a writ may be issued. The relief requested is not properly granted through a Writ of Habeas Corpus.

IT IS SO ORDERED



The Honorable Peggy L. Ableman

Orig: Prothonotary
cc: Defendant
Department of Justice

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

IN THE MATTER OF


Jimmy Lewis

)
)
) **CIVIL ACTION NO. 08M-07-131 PLA**
) **CRIMINAL ID: 0305016966**
)
)
)
) **HABEAS CORPUS PETITION**

ORDER

This 1st day of August, **2008**, upon review of the foregoing Petition for a Writ of Habeas Corpus and the record in this case, it is the decision of the Court that the Petition is hereby **DENIED**. Petitioner is legally detained. Petitioner fails to state a claim upon which such a writ may be issued. The relief requested is not properly granted through a Writ of Habeas Corpus.

IT IS SO ORDERED



The Honorable Peggy L. Ableman

Orig: Prothonotary
cc: Defendant
Department of Justice

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

IN THE MATTER OF

Jimmy Lewis

)

)

) **CIVIL ACTION NO. 08M-07-127 PLA**

) **CRIMINAL ID: 0305016966**

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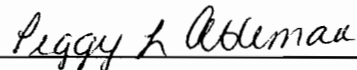
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) **HABEAS CORPUS PETITION**

ORDER

This 30th day of July, **2008**, upon review of the foregoing Petition for a Writ of Habeas Corpus and the record in this case, it is the decision of the Court that the Petition is hereby **DENIED**. Petitioner is legally detained. Petitioner fails to state a claim upon which such a writ may be issued. The relief requested is not properly granted through a Writ of Habeas Corpus.

IT IS SO ORDERED



The Honorable Peggy L. Ableman

Orig: Prothonotary
cc: Defendant
Department of Justice

#153

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)	
)	
v.)	I.D. No. 0305016966
)	
JIMMIE LEWIS,)	
)	
Defendant.)	

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UPON CONSIDERATION OF DEFENDANT'S FOURTH
MOTION FOR POSTCONVICTION RELIEF
SUMMARILY DISMISSED

Submitted: August 1, 2008
Decided: August 11, 2008

This 11th day of August, 2008, it appears to the Court that:

1. On October 21, 2003, a jury found Jimmie Lewis ("Lewis") guilty of Carjacking in the Second Degree, Felony Theft, and Resisting Arrest. The Court sentenced him to eight years at Level V, suspended after six years for decreasing levels of supervision. The Supreme Court affirmed his convictions and sentences on direct appeal.¹ Most recently, the Supreme Court affirmed this Court's denial of his third motion for postconviction relief on the grounds that his claims were previously adjudicated and time-barred.²

¹ *Lewis v. State*, No. 64, 2005 (Del. Sept. 29, 2005) (ORDER).

² *Lewis v. State*, 2008 WL 2721607 (Del. Jul. 14, 2008) (ORDER).

2. In this fourth postconviction motion, Lewis appears to raise five arguments. First, Lewis contends that his convictions were improper because the Grand Jury's indictment lacked the required oath and affirmation. As a result of this error, he contends that his counsel was ineffective, that the trial judge abused her discretion for permitting trial to go forward, and that a miscarriage of justice occurred. Second, because he claims he has already served more time than statutorily required, he argues that any further prosecution of him is illegal. Third, he submits that most of the orders from this Court lack a trial judge's signature, making his continued incarceration illegal. Fourth, he contends that his sentence is ambiguous because the sentencing order does not state which of his sentences – one to be served for one year at Level V, and one to be served at Level IV for one year – is to be suspended. Fifth, he claims that a trial judge who was not the original trial judge should have recused himself after a juror asked him a question that he was unable to answer regarding the element of "immediate presence" for his Carjacking in the Second Degree charge.

3. Prior to addressing the substantive merits of any claim for postconviction relief, the Court must first determine whether the defendant has met the procedural requirements of Superior Court Criminal Rule 61

(“Rule 61”).³ If the procedural requirements of Rule 61 are not met, in order to protect the integrity of the procedural rules, the Court should not consider the merits of a postconviction claim.⁴ In those cases, the Court may summarily dismiss the defendant’s claim “[i]f it plainly appears from the motion for postconviction relief and the record of prior proceedings in the case that the movant is not entitled to relief[.]”⁵

4. Rule 61(i) imposes four procedural imperatives: (1) the motion must be filed within one year of a final order of conviction;⁶ (2) any basis for relief must have been asserted previously in any prior postconviction proceeding; (3) any basis for relief must have been asserted at trial or on direct appeal as required by the court rules unless the movant shows prejudice to his rights or cause for relief; and (4) any basis for relief must not have been formerly adjudicated in any proceeding. The bars to relief under (1), (2), and (3), however, do not apply “to a claim that the court lacked jurisdiction or to a colorable claim that there was a miscarriage of justice

³ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990). *See also Bailey v. State*, 588 A.2d 1121, 1127 (Del. Super. Ct. 1991).

⁴ *State v. Gattis*, 1995 WL 790961, at *2 (Del. Super. Ct. Dec. 28, 1995) (citing *Younger*, 580 A.2d at 554), *aff’d*, 697 A.2d 1174 (Del. 1997), *cert. denied*, 522 U.S. 1124 (1998).

⁵ Super. Ct. Crim. R. 61(d)(4).

⁶ If the final order of conviction occurred before July 1, 2005, the motion must be filed within three years. If the final order of conviction occurred on or after July 1, 2005, however, the motion must be filed within one year. *See* Super. Ct. Crim. R. 61(i)(1) (July 1, 2005) (amending Super. Ct. Crim. R. 61(i)(1) (May 1, 1996)).

because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.”⁷ Moreover, the procedural bars of (2) and (4) may be overcome if “reconsideration of the claim is warranted in the interest of justice.”⁸

5. Lewis’s claims are all procedurally barred. First, Rule 61(i)(4) bars consideration of his claims because the Supreme Court has already found that Lewis is unable to overcome the time-bars for any of his claims.⁹ Similarly, any claim of a violation of his right to due process was not raised in his previous postconviction motions, nor in his appeal to the Supreme Court, as required by Rule 61(i)(2).¹⁰ Lewis’s current motion is also time-barred by Rule 61(i)(1) because he filed this motion on July 31, 2008, more than one year after his conviction became final.¹¹

⁷ Super. Ct. Crim. R. 61(i)(5).

⁸ *Id.* R. 61(i)(4).

⁹ *Lewis v. State*, 2008 WL 2721607 (Del. Jul. 14, 2008) (ORDER).

¹⁰ Lewis had numerous opportunities to raise these claims, as evidenced by the number of cases in which both this Court and Supreme Court have addressed his motions. *See, e.g., State v. Lewis*, 2006 WL 2560145, at *4 (Del. Super. Ct. Aug. 29, 2006); *Lewis v. State*, 884 A.2d 512, 2005 WL 2414293, at *4 (Del. Sept. 29, 2005) (TABLE); *Lewis v. State*, 940 A.2d 946, 2007 WL 3385910 (Del. Nov. 15, 2007) (TABLE).

¹¹ The Supreme Court issued its mandate affirming his convictions and sentences on September 29, 2005. *See* Docket 90.

6. This Court will also not consider the merits of his motion, despite the procedural bars, because nothing in Lewis's motion demonstrates a miscarriage of justice or warrants this Court's consideration in the interest of justice.¹² Lewis's claims of ineffective assistance of counsel and violation of his due process rights have already been found to be without merit.¹³ While those claims were not based on counsel's failure to object to the indictment's lack of oath or affirmation or a lack of signatures on this Court's orders, Lewis could easily have included those claims in any of his three previous motions or in his direct appeal to the Supreme Court. Moreover, Lewis has provided no evidence that the indictment was faulty, that this Court failed to sign any of the orders it issued, or that any conversation with a judge other than the trial judge required his recusal.¹⁴ Finally, regarding his claim that his sentence is ambiguous, not only has

¹² Super. Ct. Crim. R. 61(i)(4). *See also State v. Lewis*, 2007 WL 1241873, at *1-2 (Del. Super. Ct. Apr. 27, 2007) (finding no basis to overcome the procedural bars).

¹³ *State v. Lewis*, 2007 WL 1241873, at *2 (Del. Super. Ct. Apr. 27, 2007), *aff'd*, 940 A.2d 946, 2007 WL 3385910 (Del. Nov. 15, 2007) (Table).

¹⁴ *See, e.g., State v. Jordan*, 1994 WL 637299, at *3 (Del. Super. Ct. Jun. 23, 1994), *aff'd*, 648 A.2d 424, 1994 WL 466142 (Aug. 25, 1994) (Table) ("This Court need not address Postconviction Relief claims that are conclusory and unsubstantiated."); *State v. Brown*, 1998 WL 735880, at *3 (Del. Super. Ct. Aug. 20, 1998), *aff'd*, 734 A.2d 640, 1999 WL 591450 (Del. May 21, 1999) (Table) ("Conclusory claims raised in a defendant's motion for postconviction relief are insufficient to prove ineffective assistance of counsel and will not be addressed.").

Lewis failed to raise this claim in any of his previous motions, but the Supreme Court has also affirmed his sentence.¹⁵

7. Because Lewis's claims should have been raised in his previous motions and are time-barred, it plainly appears to this Court that Lewis is not entitled to relief. Accordingly, Lewis's motion for postconviction is **SUMMARILY DISMISSED.**

IT IS SO ORDERED.

Peggy L. Ableman
Peggy L. Ableman, J.

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¹⁵ *Lewis v. State*, 884 A.2d 512, 2005 WL 2414293 (Del. Sept. 29, 2005) (Table).

FBI: Jimmie KewSBI# 506622 UNIT SHU17, C43

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